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Water Justice Will Not Be Televised: Moral Advocacy and the Struggle for Transformative Remunicipalisation in Jakarta

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ABSTRACT: Aiming to advance our understanding of the transformative potential of remunicipalisation, this paper looks at the uncertain and unequal struggle for water remunicipalisation in Jakarta over the last 20 years, and offers an ontological account of the discourse on the human right to water as a catalyst for progressive policy change. A first, formal definition of transformative remunicipalisation is herein offered. This is defined as an ideal type of water remunicipalisation whose institutional legitimacy rests on the moral advocacy of emancipatory insurgency and whose implementation offers concrete possibilities of progress towards emancipatory objectives. With regard to moral advocacy and collective action, the hybridisation of emancipatory discourse enables transcendence of the limitations of the Western concept of the human right to water. By drawing on cross-cultural principles like 'water as life' and the primacy of human flourishing, the proponents of transformative remunicipalisation may turn the human right to water into a powerful discursive resource responding to Southern, if not universal, logics of appropriateness. While water justice is the terrain of inevitable contestation, the tensions between the normative ideals of collective action and the practice of advocacy require the constant reinterpretation of these ideals. This is why water justice, and indeed transformative remunicipalisation, will not be televised.

KEYWORDS: Water justice, human right to water, moral advocacy, transformative remunicipalisation, Jakarta, Indonesia

INTRODUCTION

In 1997, two water concessions were awarded to private consortia in Jakarta, the capital of Indonesia, each covering half of the city. The experience with these concessions is a textbook case of the problems with water privatisation and with the rationales for remunicipalisation, defined as the return of water services to full public ownership, management and democratic control following a period of full or partial privatisation. This paper looks at the uncertain and unequal struggle for and against water remunicipalisation in Jakarta over the last 20 years, and considers the role played by moral advocacy and collective action in disclosing or precluding possibilities for water justice. Here, moral advocacy is a discursive strategy central to the mobilisation and counter-mobilisation strategies deployed by two advocacy coalitions, respectively for and against water remunicipalisation. In particular, the human right to water has been part and parcel of the discourse of the pro-remunicipalisation coalition since 2002 and

has informed mobilisation tactics ranging from litigation to the provision of policy advice, together with more traditional repertoires of grassroots advocacy. The comparative evaluation of the effectiveness of the mobilisation and counter-mobilisation tactics deployed in this struggle reveals, we claim, the possibilities for progressive social and political change in the Global South and beyond.

This paper aims to contribute to the debate on the transformative nature of remunicipalisation in water and other public services. The contours of this debate can be drawn around two main theses. On the one hand, the transformative remunicipalisation thesis sees remunicipalisation as an exercise in concrete utopias, or the construction of better possible futures (Bhaskar, 1993; Patomäki, 2006). In this view, remunicipalisation is an emancipatory economic, political and social project that may subvert neo-liberal urbanism by inverting the priorities of service provision from the pursuit of private gain to that of collective flourishing (Hall et al., 2013; Becker et al., 2015; McDonald, 2016; Lobina, 2017; Cumbers and Becker, 2018). On the other hand, the pragmatic remunicipalisation thesis posits that the policy changes brought about by remunicipalisation are incremental adjustments instrumental to the reproduction of New Public Management (NPM) regimes in local government. Warner and Aldag (forthcoming) and Warner and Hefetz (2012) find that the primary drivers of remunicipalisation in the US are the pragmatic concerns of contract management such as service quality and cost savings, rather than political considerations. For their part, Voorn et al. (2019) argue that the preponderance of corporatisation following the reversal of privatisation shows a continuity between remunicipalisation and NPM practices. Yet, the two theses should not be seen as mutually exclusive, as suggested by the actuality and coexistence of diverse motivations and practices of remunicipalisation (McDonald, 2018b; Warner and Clifton, 2014). This calls for an investigation of "the adequacy of the material conditions of possibility" (Amsler, 2015: 107) of the policy processes and policy outcomes of remunicipalisation.

In this vein, Lobina (2015, 2017) puts forward the proposition that the human right to water serves as a beacon for (potentially) transformative processes of remunicipalisation, a claim which appears to contrast with an important body of scholarship. In an influential contribution to the literature on social mobilisation against water privatisation in the Global South, Bakker (2007) emphasises the limitations of the human rights discourse for advocating and achieving progressive policy change. These limitations include the fact that, because of their Western origin, "[h]uman rights are compatible with private sector provision of water supply; and as such, a limited strategy for those seeking to refute water privatization" (Bakker, 2007: 447).¹ These criticisms notwithstanding, Bakker (2010) finds some merit in the discourse on the human right to water – notably, the conferral of moral legitimacy on progressive redistributive efforts – and acknowledges limitations in her preferred political strategy, that of evoking the commons in opposition to commodification. Evidence of the compatibility of the human right to water with progressive policies in the Global North and South, however, is growing (Miroso and Harris, 2012; Bieler, 2015, 2017; Bieler and Jordan, 2017; Sultana and Loftus, forthcoming). Sultana and Loftus (2012, 2015) have also made a cogent case for the human right to water as a progressive force in the struggle for water justice. They do so by presenting citizens' claims to this right as opportunities for realigning unequal relationships around water access and heralding a transformational politics. Furthermore, Miroso and Harris (2012) show how conceptual malleability may enable the reinterpretation of the human right to water in different contexts, and facilitate progressive policy outcomes. Thus, they argue that the notions of the human right to water and water as a commons should not be seen as incompatible, but rather can be drawn on alternately to address different context-specific challenges. Finally, McDonald (2018a, forthcoming) shows that the possibility that water remunicipalisation may promote rights-based and commons-oriented agendas does not exclude the possibility that such expectations may be frustrated by the prevalence of competing and less progressive agendas. From this, it follows that each case of remunicipalisation must be assessed on its merits.

¹ Bakker (2007, 2010) is not alone in her scepticism about the emancipatory potential of the discourse on the human right to water. For reviews of other criticisms of the human right to water, see Miroso and Harris (2012) and Jepson et al. (2017).

The above suggests that we are bereft of a comprehensive and coherent explanation of the moral advocacy of water remunicipalisation. As moral advocacy is a key component of collective action, this leaves us ill-equipped to critically engage with the real-world constraints and possibilities of transformative remunicipalisation. Because policy outcome cannot be understood in isolation from the policy process, this also impairs our ability to grasp the nature of transformative remunicipalisation. Hence, we offer an ontological account of institutions-in-use that is grounded in collective action for water service reform. This account serves as a framework for the discourse on the human right to water, as well as for other paradigms that may inform the moral advocacy of water remunicipalisation. It integrates, and discriminates between, the insights of sceptics and those of proponents of the human right to water, in light of what institutions fundamentally are and what they can and cannot be expected to do in the messy arena of contested governance. Attentive to the duality of agency and institutions, it embraces the open-endedness of the institutional trajectories of moral advocacy and collective action. Mindful of the implications of this duality, it rejects the possibility that discursive strategies and resources may constitute self-sufficient determinants of events. In other words, this ontological account supports an inquiry into the articulation rather than the segregation of mobilisation strategies for transformative remunicipalisation. It also enables an ontological definition of transformative remunicipalisation – inferred from the empirical observation of the struggle for remunicipalisation in Jakarta – that is intended to bring clarity to the debate on the nature of this form of water service provision.

Moving from these premises, this paper makes three distinctive contributions. A first (formal) definition of transformative remunicipalisation is offered herein. This is defined as an ideal type of water remunicipalisation whose institutional legitimacy² rests on the moral advocacy of emancipatory insurgency and whose implementation offers concrete possibilities of progress towards emancipatory objectives. The paper then advances two related arguments, both bearing on the centrality of moral advocacy to collective action. One contention – and the second of the three contributions referred to above – is that the hybridisation of emancipatory discourse enables transcendence of the limitations of the Western concept of the human right to water. By drawing on cross-cultural principles that hold water to be fundamental to life and recognise the primacy of human flourishing, the proponents of transformative remunicipalisation may turn the human right to water into a powerful discursive resource that responds to Southern, if not universal, logics of appropriateness. The third contribution offered by this paper is the contention that, as a normative aim of transformative remunicipalisation, water justice becomes the terrain of inevitable contestation. This takes unpredictable forms, bringing into sharp relief the unequal resources of the proponents and opponents of remunicipalisation and suggesting that no mobilisation strategy is infallible. Also, the tensions between the normative ideals that inspire collective action and the strategic practice of advocacy – tensions that are inherent the pursuit of concrete utopias – require the constant reinterpretation of these ideals. This latter argument shows why water justice will not be televised.³

The next two sections sketch the analytical framework and present our methods, followed by a summary in Section 4 of the process and outcome of water privatisation in Jakarta. After examining the constraints and possibilities for water justice resulting from the mobilisation and counter-mobilisation strategies deployed respectively by the pro- and anti-remunicipalisation coalitions, the paper considers the likelihood of remunicipalisation in Jakarta. In the concluding section, findings are discussed.

² Institutional legitimacy resides in the social acceptability and credibility of institutions (Scott, 2008).

³ Reference is made, both here and in the title, to Gil Scott-Heron's seminal song "The Revolution Will Not Be Televised", whose lyrics invoke active engagement in social struggle as a precondition of social conquest:

*You will not be able to stay home, brother
You will not be able to plug in, turn on and cop out
You will not be able to lose yourself on skag and skip out for beer during the commercials
Because the revolution will not be televised*

The full lyrics are available at <https://genius.com/Gil-scott-heron-the-revolution-will-not-be-televised-lyrics#>.

AN INSTITUTIONAL ONTOLOGY OF CONTESTED REMUNICIPALISATION

A microanalytic approach to contested remunicipalisation warrants an understanding of the agency of social coalitions promoting and opposing remunicipalisation in their institutional setting. Central to this understanding is an ontological account of the nature of institutions and their role in social causation. To complete the framework, we attempt to articulate some of the constraints and possibilities of moral advocacy that are relevant to our analysis. These include the intrinsic fallibility of mobilisation strategies and the possibility of combining elements of different emancipatory discourses in a mobilisation strategy.

Institutions are systems of social rules and conventions that structure social interactions by creating stable expectations of the behaviour of others, thus constraining and enabling agency (Hodgson, 2003). The durability of institutions rests on the mutually reinforcing interdependence between their regulative, normative and cultural-cognitive elements (Scott, 2008). If institutions mould behaviour, they are also in return shaped by agency. Not only is their reproduction implicated in a social system of enabling and constraining power relations (Lawson, 2015c), but they also offer opportunities for creative agency. An important process in the production of institutions is that of institutional bricolage – the creative hybridisation of existing social formulae such as social norms, styles of thinking and moral worldviews, which are performed by individual or organisational 'bricoleurs' in response to contingencies. This assembling of new institutions is made possible by the leakage of meaning from one institutional setting to another, as symbols and discourses are legitimised through metaphor and analogy in recognition of communal aspirations. In turn, the creation and legitimisation of new understandings that result from the practice of institutional bricolage becomes a constitutive element of the process of institutional emergence (Cleaver, 2012). These insights reveal that the usage and reproduction of institutions occur at the intersection between ontological openness (as openness of meaning) and ethical openness (as openness of behaviour).

The process and outcome of collective action as networked government-beyond-the-state (Swyngedouw, 2005) depend on the alignment of key components of agency (like actors' motivation and power) with the institutional environment (Lobina, 2012). Power, or the ability to influence the actions of others (Handgraaf et al., 2008) by mobilising resources in an asymmetric relational context (Lobina, 2012), is central to this institutional alignment. As the moral dimension of paradigm advocacy, moral advocacy entails the marshalling of discursive resources by the social coalitions that promote competing water policies (Lobina, 2017). This act enables hegemonic and counter-hegemonic coalitions to ascribe moral value to their preferred institutional arrangements by, through discourse, evoking analogies with existing institutions (Cleaver, 2012). The strategic importance of moral advocacy, therefore, lies in the projection of an image of normative coherence (Lobina, 2012) that may strengthen the cohesiveness of a coalition's membership and at the same time extend the social support it enjoys via networks of social relations. Other factors of collective action include the coalition's ability to take advantage of stable and volatile political opportunity structures by adopting effective mobilisation tactics (Lobina et al., 2011). Ultimately, no material or discursive resource is sufficient in and of itself to determine policy outcome. In fact, much more is at play as competing coalitions behave strategically in a complex and contingent environment. The same can, of course, be said of the causal powers of the rules, norms and customs invoked as part of moral advocacy.

The idea of water justice embraced by the advocates of transformative remunicipalisation chimes with Zwarteveen and Boelens' (2014) conceptualisation, which views water justice as a collective aspiration to development through and with water services and resources. It articulates socially constituted questions of access and distribution, cultural recognition, political participation and ecological integrity. It is arguable that, as it is enshrined in international law, the human right to water is compatible with this idea of water justice. Defined as the right of everyone to sufficient, safe, acceptable, accessible and affordable water for personal and domestic uses, the human right to water is underpinned by principles whose joint fulfilment is conducive to emancipatory outcomes: availability, quality and safety, cultural

acceptability, accessibility, affordability, equality, non-discrimination, access to information and transparency, participation, accountability and sustainability. Also, states have obligations to use the maximum available resources for the progressive realisation of the right to water and to avoid retrogression in the enjoyment of the right (Brown et al., 2016). The influence of the UN resolutions on the human right to water extends from the regulative to the normative domain. In fact, these increasingly serve as a moral framework for collective action in the Global North and Global South (Sultana and Loftus, forthcoming). The ontological affinity of the human right to water is not confined to the idea of water justice. Social movements advocating water remunicipalisation have thus hybridised the discourse on the human right to water and that on 'water as a commons' (Bieler, 2017; Lobina, 2017; Carrozza and Fantini, 2016; Mazzoni and Cicognani, 2013). All these affinities are premised on the recognition of the centrality of water to life and ecosystem health (Bakker, 2007; Zwartveen and Boelens, 2014). By enabling meaning to leak from one discourse to the other, they disclose possibilities for institutional bricolage and moral advocacy.

Conversely, the limitations of the discourse on the human right to water as a mobilisation strategy that have been alleged in the literature ought to be revisited. The instances of co-optation of this discourse by the proponents of privatisation, as illustrated by Bakker (2007) and McDonald (forthcoming), are no reason to abandon the moral advocacy of this right as a mobilisation strategy. If the creation of meaning is "essentially contested collective action" (Steinberg, 1999: 737), it should be expected that co-optation is the staple of hegemonic discourse (Howarth, 2010). Indeed, all the grand principles of governance – including human rights, justice, equity, freedom, democracy, participation, development and sustainability – are susceptible to becoming the terrain of contestation due to their ontological openness. This does in turn result in the necessity of 'wickedness', that is, the impossibility in a plural society of preventing disagreement about the meaning of moral discourse. Two constitutive attributes of these grand principles make them strategically important for contested collective action. These principles are transcendent and universal, as they conjure the possibility of going beyond society's developmental limitations in a way that benefits all. Combined, these attributes can be construed as foundational elements of ideal societies. Hence the strategic appeal of controlling their interpretation as a way of attaining and retaining power, and the necessary character of wickedness (Lobina, 2016, 2018).⁴

METHODS

The necessity of wickedness militates against the very idea of the end of history (Hall et al., 2013). In so doing, it brings to the fore questions regarding the institutional alignment and relative adequacy of the counter-hegemonic mobilisation strategies practised by the advocates of remunicipalisation, and the hegemonic counter-mobilisation strategies employed by the defenders of privatisation. For ease of illustration, we loosely define the pro- and anti-remunicipalisation coalitions in light of the commonality of policy objectives among their respective members. This loose definition enables us to account for the role of actors who have contributed to the moral advocacy of a policy option without being formally part of any coalition. We do not, however, exclude tensions within either of the two coalitions nor changes in their membership. For each of the two coalitions, our attention goes to the alignment of their composition, discourses, mobilisation tactics and the possibilities for water justice that have been disclosed or precluded by moral advocacy.

To illustrate these issues, we draw on the results of semi-structured interviews and documental evidence. Interviews for this research were conducted by the authors in July 2018 and were supplemented by previous interviews in early 2017. These were combined with extensive reviews of secondary literature including media reports, practitioners' and academic reports, and a study of the

⁴ To render the transcendent and universal nature of grand principles of water governance such as Integrated Water Resource Management, Molle (2008) has perceptively coined the term 'Nirvana concepts'.

concession contracts themselves. We conducted 22 interviews in total, from what we feel is a representative sampling of the full spectrum of policy preferences related to debates over water service reform in the city. Interviewees included trade unionists, representatives from NGOs, community activists, journalists, representatives from the asset holding company, international financial institutions and the private concessionaires themselves (see the Appendix for a complete list).

Some interviewees were supportive of privatisation and some were opposed. Some were in favour of remunicipalisation, others were not. In compliance with the research ethics approval process at the University of Greenwich, we have anonymised all interviews to prevent any association of a particular view with an individual or organisation. For the interviews conducted in July 2018, the interview format was similar to that used in the other case studies in this issue (see the Introduction for more details). Interviewees were asked about their knowledge of water remunicipalisation in general, their familiarity with debates on the topic in Jakarta in particular, their opinions on who is pushing for remunicipalisation (and why), who is opposed to it (and why), what they consider to be the biggest barriers to, and opportunities for, water remunicipalisation in Jakarta, and what they thought would be the likely outcomes of this matter in the future.

A BRIEF HISTORY OF WATER PRIVATISATION IN JAKARTA

Unequal access to Jakarta's water supply began before national independence and continued under Sukarno's regime and Suharto's dictatorship (1966-1998) (Kooy and Bakker, 2015; Bakker, 2010). Despite the progress made by public utility PAM Jaya in expanding service coverage, by 1991 only 45 percent of Jakarta's residents had access to a piped water supply, and even that was of poor quality. Many therefore accessed water through alternative means: the rich by digging their own deep wells, the poor by buying water from small-scale private vendors. In 1991, the World Bank paved the way for water privatisation with a US\$92 million loan for infrastructure improvements (Harsono, 2003). Central to the rationale for privatisation was the assumption that the private sector was inherently more efficient than the public sector (Braadbaart, 2007). Suharto's policy preferences, however, were not the only motive for his decision to divide the city into two and, in the absence of competition and with no clear regulatory system in place, award two water supply concessions. In line with the practice known as *Korupsi, Kolusi, Nepotisme* (corruption, collusion, nepotism), two multinationals bought political protection by establishing joint ventures with oligarchs. In June 1997, contracts were signed by two private consortia led, respectively, by the UK-based Thames Water in partnership with Suharto's son Sigit Harjojudanto, and French-based Suez Lyonnaise des Eaux (now known as Suez) in joint venture with the Indonesian conglomerate Salim Group, owned by a crony of Suharto (Harsono, 2003).

The 25-year concessions went to Suez for West Jakarta and Thames Water for East Jakarta, becoming operational in February 1998. In May 1998, amid the civil unrest that followed the Asian economic crisis and that would cause Suharto's downfall, the expatriate executives of the two multinationals fled the country. Instructed by the Governor of Jakarta, PAM Jaya seized control of management. An attempt to cancel the contracts on the grounds of corruption and illegality failed when the multinationals threatened to sue the government for breach of contract. To avoid costly litigation and the risk of discouraging foreign investment, the provincial government of Jakarta agreed to reinstate the concessionaires. For their part, accepting that the corrupt concessions were no longer politically defensible, Thames Water and Suez agreed to renegotiate the contracts in 2001. They thus bought out Sigit Harjojudanto and the Salim Group, who then exited the two consortia. The new concessionaires – PT Thames PAM Jaya (TPJ) and PT PAM Lyonnaise Jaya (Palyja) – were joint ventures between the two multinationals and new Indonesian partners with a less tarnished image (Harsono, 2003; Braadbaart, 2007; Hall, 1999).

One aim of the renegotiation was to ensure the profitability of the concessions (Harsono, 2003; Santono, n.d.; Lanti, 2006; Braadbaart, 2007; Hall, 1999). The renegotiation created a new regulatory regime with an independent regulatory agency and a new system for payment of the companies. The

concessionaires would now be paid according to their costs, protected against inflation, interest rates, foreign exchange rate and even tax changes. In addition to a predetermined yearly management fee, tariffs in Jakarta would be calculated to provide a guaranteed return on capital of 22 percent. These contractual terms were unusually generous by international standards, removing any element of financial risk from the companies and giving them no incentive to operate efficiently as profit was guaranteed irrespective of performance. When the tariffs charged to users were held down to make them affordable, the shortfall in the projected profit had to be covered by the asset holding company PAM Jaya and the provincial government of Jakarta, not by the concessionaires (Lobina and Hall, 2013).

The performance of the two concessions has been abysmal both before and since the renegotiation. The first years of operations saw poor performance in the expansion of connections, in investment, and in reduction of leakage (Hall and Lobina, 2006; Harsono, 2003; Andrews and Yñiguez, 2004; PSIRU, 2014). The gradual exit of the multinationals from the concessions coincided with a growing assertiveness in the regulatory stance of Jakarta's provincial government and the strategic repositioning of their international operations (Bakker, 2010; Hall and Lobina, 2012). In 2006, Thames Water sold all its shares in TPJ, which was renamed Aetra, and Suez reduced its shareholding in Palyja. Further ownership changes came after a 2012 lawsuit (of which more later) to have the two concessions declared null and void. In 2017, Suez sold all its shares in Palyja, while all shares in Aetra were acquired by Moya Indonesia Holdings, a water company owned by the Salim Group (Wegmann, 2018).

Ownership changes notwithstanding, throughout the life of the concession there has been little improvement in performance, and service coverage has not expanded significantly. In February 2019, Jakarta Governor Anies Baswedan acknowledged that coverage had only increased from 44.5 percent in 1998 to 59.4 percent 20 years later (Atika and Aqil, 2019). Conversely, the independent research organisation Amrta Institute estimates that access to functioning connections is as low as 35 percent (Heriyanto, 2018). This lacklustre performance is compounded by steep price increases and cost inefficiencies that cast doubts on the justification of these increases (PSI et al., 2015). The limited expansion of service coverage – caused in part by the low profitability of connecting poor households (Bakker, 2010) – has exacerbated exclusionary patterns. The unserved population is in fact forced to buy water in jerry cans, for which they are charged 25 percent more than the average water tariff (Interview 2), and which can cost as much as half of their daily income, or to dig wells to access Jakarta's – significantly polluted (Zamzami and Ardhianie, 2015) – low-level groundwater. In addition to problems of affordability and inequity, particularly for the unserved (Heriyanto, 2018; Voice of America, 2017), taxpayers have to increasingly subsidise water and guarantee the companies' profits. In 2011 alone, the financial loss to PAM Jaya that was caused by the compensatory payment of water charges to the concessionaires equalled US\$18 million (Zamzami and Ardhianie, 2015).

There are also perversely intertwined problems of service quality and environmental hazards. Those connected to the piped water network receive water of bad quality and must endure frequent water cuts for hours and sometimes days. In some areas water comes infrequently, for only a few hours a day and often in the middle of the night. Other areas are affected by outages. In 2013 alone, nearly 40,000 customer complaints about water deficiency were made (ibid). The piped water often smells, causes skin irritations, and at times is muddy.⁵ Consequently, those who can afford it resort to deep water drilling and consume the cleaner deep-level groundwater instead of piped water. As a result, Jakarta is sinking faster than any other big city on the planet. While 40 percent of Jakarta is already below sea level, at this rate North Jakarta – an area mainly populated by the poor – could be under water within a decade (Kimmelman, 2017).

The experience of Jakarta provides a textbook case on the problems of water privatisation and, in turn, the determinants of remunicipalisation. The problems include private companies' use of corruption and restricted competition to capture local markets, conflicts between the companies' commercial

⁵ Interviews with various stakeholders in Jakarta conducted between 5 and 12 July 2018.

considerations and social objectives, and the exploitation of asymmetric information and power to indulge in monopolistic behaviour at the expense of consumers, taxpayers, workers and the environment (Braadbaart, 2007; Hall and Lobina, 2007; Lobina, 2005, 2013, 2015).

EFFORTS TO REMUNICIPALISE

A pro-remunicipalisation coalition gradually emerged out of the anti-privatisation coalition that opposed the two concessions from the outset. This anti-privatisation coalition was originally comprised of members of the public utility (turned asset holding company) PAM Jaya, the provincial government of Jakarta, and trade unionists. After failing to remunicipalise the service in 1998, PAM Jaya and the provincial government turned their attention to regulating the concessionaires while, by contrast, the Jakarta Water Workers Union's (SP-PDAM) antagonistic approach persisted for years. From 1998 to 2000 PAM Jaya workers, who were members of SP-PDAM, had continuous strikes and occupied PAM Jaya's offices (Interview 12). Labour mobilisation continued after the 2001 renegotiation and coalesced with a loose, grassroots pro-remunicipalisation coalition that found a common discourse in the human right to water (Zamzami and Ardhanie, n.d.). The provincial government neither joined nor coordinated with this grassroots coalition; however, it has opened a window of opportunity for remunicipalisation in response to the legal victories of the coalition. There have nonetheless been tensions between the grassroots coalition and the provincial government as the latter's interpretation of remunicipalisation diverged from that of the former.

In 2002, the civic coalition KRUHA (People's Coalition for the Right to Water) was created with the aim of promoting the human right to water and opposing water commodification and privatisation. Importantly, KRUHA conceived the human right to water as having an individual as well as a collective dimension, an inalienable, universal and inclusive right. This was in recognition of the fact that in an agrarian nation like Indonesia water's importance went beyond individual consumption and extended to irrigation and farming activities that sustain the livelihood of small farmers (KRUHA, 2016; Hadipuro et al., 2016).

The grassroots pro-remunicipalisation coalition has revolved around KRUHA's leadership and has consisted of a wide range of national and local actors representing a variety of environmental and social interests. Its membership has changed as the mobilisation strategy focused alternately on national and local issues, while its discourse has evolved around the notion of the human right to water and its connection first with an anti-privatisation agenda, and then with the promotion of remunicipalisation as an opportunity to realise the human right to water and foster water justice. This broad and diverse coalition has been able to function by building alliances across differences, adhering to the principle of participatory democracy and becoming a learning social network. The breadth of the coalition has also enabled it to expand the networks of relations, drawing on a pool of skills and resources and deploying a variety of mobilisation tactics. These tactics have included public education through social media campaigns and videos; seminars and conferences; outreach in and outside Jakarta (Interview 2); protests, especially marches and rallies on the occasion of International Water Day (Interview 10); policy advocacy intended to influence Jakarta's governor (Interview 5, 13); and litigation aimed at undermining the legal foundations of water privatisation in Indonesia and of the Jakarta water concessions (Marwa, 2017).

We focus here on litigation in consideration of its relative effectiveness in furthering the policy objectives of the coalition.

A first victory for the 'Western' human right to water: 2004-2005

In June 2004, a grassroots coalition coordinated by KRUHA, legally represented by Lembaga Bantuan Hukum Jakarta (LBH, or Jakarta Legal Aid Foundation) and consisting of 13 national civic organisations (see Table 1 for a list of members), unsuccessfully brought a court case against Water Resources Law No. 7/2004, a new law that promoted privatisation, arguing that this violated the Constitution as the latter

implicitly recognised the human right to water. The court case argued that, by allowing for privatisation and commercialisation, the water resources law hindered people – especially small farmers – from fulfilling their water needs such as drinking, sanitation and irrigation. The case was informed by the hybridisation of various discourses, including the discourse on the human right to water and 'water as a commons'. This was evident as the plaintiffs quoted from Indonesia's Constitution, citing its requirement that the state controls water resources and uses them for the greatest benefit of the Indonesian people, and that citizens' right to life and to basic needs must be protected. They also argued that the water law undermined environmental sustainability by enabling commercialisation and forms of water grabbing (Susilo et al., 2016; Hadipuro et al., 2016; Hukum Online.com, 2004; Interview 9).

Table 1. Members of the coalition that, in 2004, brought a court case against Water Resources Law No. 7/2004.

Acronym	Full name of organisation	Comments
LBH	Lembaga Bantuan Hukum Jakarta (Jakarta Legal Aid Foundation)	A legal aid foundation which provides legal aid to the poor and oppressed and those illiterate in the law
KRuHA	Koalisi Rakyat untuk Hak Atas Air (People's Coalition for the Right to Water)	A coalition of civic organisations created to promote the human right to water and oppose water commodification and privatisation
Walhi	Wahana Lingkungan Hidup (Friends of the Earth Indonesia)	Environmental NGO
	Perkumpulan Konservasi Alam dan Lingkungan Hidup (Nature and Environmental Conservation)	Environmental NGO
AMAN	Yayasan Gita Pertiwi	Environmental NGO
	Aliansi Masyarakat Adat Nusantara (Alliance of Indigenous People of the Archipelago)	Indigenous group
	Yayasan Cakrawala Timur Madiun	Human right and gender group
	Yayasan Padi Indonesia (Indonesia Rice Association)	A national farmers' association
FSPI	Federasi Serikat Petani Indonesia	A national farmers' association
LP3M Al Azhar	Lembaga Pendidikan, Pengembangan, Pelayanan, Masyarakat Al-Azhar (Institute of People's Education, Empowerment, and Service Al-Azhar)	Civic organization concerned with education and community empowerment
JRMK	Jaringan Rakyat Miskin Kota (Urban Poor Consortium)	Civic organisation concerned with urban poverty
Somasi NTB	Solidaritas Masyarakat untuk Transparansi (People's Solidarity for Transparency)	Civic organisation concerned with government transparency and corruption
	Islamic Center for Democracy and Human Rights Empowerment	Islamic NGO concerned with democracy and human rights

Source: Authors' interviews.

In 2005, the Constitutional Court rejected the court case and ruled that the water resources law complied with the Constitution provided that neither privatisation nor commercialisation deny the human right to water and that the state fulfils and protects this right (Al'Afghani, 2006). This was a clear victory for the 'Western' idea of the human right to water being compatible with privatisation, as warned by Bakker (2007, 2010). However, despite this legal defeat, the coalition succeeded in generating legal and political support for the discourse on the human right to water, which they had crafted through a process of institutional bricolage. In particular, the Constitutional Court's requirements that privatisation should not undermine the human right to water and that the state should fulfil and protect this right encouraged KRuHA and some of its allies in the national grassroots coalition to continue mobilising against water privatisation in Jakarta. At the same time, the constitutional ruling gave public prominence to the issue of water privatisation and commercialisation (Al'Afghani, 2006).

Two victories for the 'de-Westernised' human right to water: 2011-2017

In 2011, up to nine civic organisations representing a broad range of social and environmental interests (see Table 2 for a list) joined the new, local Coalition of Jakarta Residents Opposing Water Privatisation (KMMSAJ), recognising that they shared a common interest in reversing water privatisation. Albeit not formally part of the coalition, an important role was played by the Amrta Institute for Water Literacy – a non-profit, research-based advocacy group concerned with water management – and the trade union SP-PDAM (Marwa, 2017; Zamzami and Ardhianie, 2015; Interview 2).

KMMSAJ framed the discourse around the realisation of the human right to water (Interview 9), intended as a policy for the decommodification of water management. Also, for the first time, the hybridised discourse on 'water as a human right and a commons' was connected with a remunicipalisation agenda. It thus became de-Westernised, as it made the right to water incompatible with privatisation. The coalition pursued remunicipalisation not to achieve ownership change for its own sake, but rather it saw public ownership as being instrumental in promoting an emancipatory paradigm shift based on the notion of the human right to water as both an individual and a collective right as well as on the concept of 'the commons' and related notions like environmental sustainability. The idea of remunicipalisation was introduced to the local debate by the Amrta Institute, which had developed knowledge on this policy option thanks to its collaboration with international allies such as the Transnational Institute and Public Services International, and its exposure to the research of the Public Services International Research Unit at the University of Greenwich. The documentation of the international diffusion of water remunicipalisation thus represented a credible support of efforts to counter the hegemony of privatisation (Marwa, 2017).

To give the new de-Westernised discourse more legal clout, an emphasis was placed on issues of anti-corruption, transparency and accountability. Although these issues are arguably implicit in the human right to water as enshrined in international law, many in Indonesia do not see them as connected to the human right to water. Equipped with new legal and discursive armoury, in November 2012 KMMSAJ sued Indonesia's President, Vice President, Minister of Finance, Minister of Public Works, the Governor of Jakarta, the provincial parliament of Jakarta, PAM Jaya, and the concessionaires Palyja and Aetra. The lawsuit argued that the two concessions had breached the human right to water, and it demanded that they be terminated and water operations be handed over to the public sector. LBH Jakarta started the citizens' lawsuit (Central Jakarta District Court Case No. 527/Pdt.G/2012/PN.Jkt.Pst), acting on behalf of KMMSAJ. They argued that, although the Indonesian Constitution does not specifically mention the right to water, it incorporates the principle of the human right to water by establishing the state's duty to control water and use it for the greatest benefit of the Indonesian people (Interview 22). In March 2015, the Central Jakarta District Court decided to annul the two private water concessions on the grounds of breach of the human right to water. However, all the defendants, with the exception of the Governor of Jakarta Ahok, appealed the ruling of the District Court (Zamzami and Ardhianie, 2015; Interview 2). In October 2017, the Supreme Court annulled a verdict that upheld the appeal of the defendants, and ruled

that Jakarta's provincial government had violated the law by awarding the two concessions. It did however fall short of unambiguously invalidating the agreements (Marwa and Tobing, 2018; Charmila, 2017).

Table 2. Members of KMMSAJ (Coalition of Jakarta Residents Opposing Water Privatisation).

Acronym	Full name of organisation	Comments
KRuHA	Koalisi Rakyat untuk Hak Atas Air (People's Coalition for the Right to Water)	A coalition of civic organisations created to promote the human right to water and oppose water commodification and privatisation
LBH	Lembaga Bantuan Hukum Jakarta (Jakarta Legal Aid Foundation)	A legal aid foundation which provides legal aid to the poor and oppressed and those illiterate in the law
SP	Solidaritas Perempuan (Women's Solidarity)	National women's association which joined KMMSAJ to empower the women who suffered most from restricted access to water, as they are usually in charge of the domestic work
Walhi	Wahana Lingkungan Hidup (Friends of the Earth Indonesia)	Environmental NGO which joined KMMSAJ because of its concern with the problem of ground subsidence
KIARA	Koalisi Rakyat untuk Keadilan Perikanan (People's Coalition for Fisheries Justice)	Fishermen's group concerned about the impact on fishing of the government's proposed seawall and artificial islands, which are intended to address ground subsidence in Jakarta
JRMK	Jaringan Rakyat Miskin Kota (Jakarta Urban Poor Consortium)	A consumer group representing the urban poor
KAU	Koalisi Anti Utang (Anti-debt coalition)	A civic coalition campaigning against debt and its social costs
FPPI	Front Perjuangan Pemuda Indonesia (Indonesian Youth Struggle Front)	A national youth association concerned with social injustice
ICW	Indonesia Corruption Watch	Civic organisation devoted to the investigation of allegations of corruption in connection with Jakarta's water privatisation

Source: Authors' interviews.

This was one of two victories for a de-Westernised and holistic idea of the human right to water. In September 2013, the Islamic political organisation, Muhammadiyah, led a coalition of civic organisations and high-profile political figures (see Table 3 for a list of members) which submitted a new judicial review to the Constitutional Court against the national Water Law No. 7/2004. Muhammadiyah is a national Islamic association whose interest is in preserving natural resources in the name of the Islamic principle of stewardship. In this new judicial review, not only did the plaintiffs refer to Indonesia's Constitution, as was done in 2004, but they also introduced an Islamic religious discourse. For example, emphasis was placed on water as a gift from God that is important for the preservation of life and which should be managed for the good of all beings (Constitutional Court of the Republic of Indonesia, 2015). As a religious political organisation, Muhammadiyah has important connections and holds a prominent position in Indonesian politics. The Constitutional Court gave its ruling in February 2015, and this time – having once more recognised the human right to water – annulled the national water resources law. In particular, the

court stated that the private sector cannot be allowed to own water resources and that it should only use water allocated by the government. The court also ruled that water cannot be monetised and that small-scale farmers should be exempted from paying water management costs (Ardhianie, 2015).

Table 3. Members of the coalition that, in 2013, brought a court case against Water Resources Law No. 7/2004.

Full name of organisations/individuals	Comments
Muhammadiyah	National Islamic association whose interest is in preserving natural resources in the name of the Islamic principle of stewardship
Al Jami'yatul Washliyah	Muslim organisation
Solidaritas Juru Parkir, Pedagang Kaki Lima, Pengusaha, dan Karyawan	A coalition of associations representing street vendors, entrepreneurs and employees
Perkumpulan Vanaprastha	Environmental NGO
Drs. H. Amidhan	Individual citizen
Marwan Batubara	Individual citizen (entrepreneur and politician, Member of the Regional Representative Council of the Republic of Indonesia, 2011-2014)
Adhyaksa Dault	Individual citizen (Attorney of Law and politician, Indonesia's State Minister of Youth and Sport Affairs, 2004-2009)
Laode Ida	Individual citizen (politician, Member of the Regional Representative Council of the Republic of Indonesia, 2011-2014)
M. Hatta Taliwang	Individual citizen (politician/activist)
Rachmawati Soekarnoputri	Individual citizen (politician/activist, daughter of the first President of Indonesia, Sukarno)
Fahmi Idris	Individual citizen (politician, Indonesia's State Minister of Industry, 2004-2009)

Source: Constitutional Court of the Republic of Indonesia (2015); authors' interviews.

The 2015 ruling was seen as providing the momentum for the national anti-privatisation movement to promote a new paradigm for national water governance. For this reason KRuHA and its allies crafted an original notion of water known as *Semesta Air* (water as the source of life and human community), which is based on the principles of the human right to water, water justice, democracy and sustainability (Hadipuro et al., 2016). *Semesta Air* embodies a holistic idea of water that tries to connect human communities with the environment at urban and rural scales and to form connections with different kinds of surface water such as river water, groundwater, and rainwater, based on hydrological cycles. (Interview 22). Within this idea, the coalition also tries to promote a version of the human right to water that frames it as not only an individual but a collective right. *Semesta Air* promotes the practice of treating water as *res commune* (owned by no one and available for use by all) and thus as a commons. The management of water thus entails an important role for the public (not just the state) in decision-making

and embodies a notion of members of the community as rights holders and stakeholders in pursuit of the human right to water (ibid).

KRuHA and its allies promoted the idea of *Semesta Air* through campaigning and publications, as well as in policy consultations with the parliamentary committee tasked with drafting the new water law currently being debated in the Indonesian Parliament. The strategic aim was to persuade the parliament to incorporate the principle of *Semesta Air* in the water law so as to reduce support for commercialisation and privatisation and instead promote a central role for the community in water governance. This aim was also consistent with the struggle for transformative remunicipalisation in Jakarta, which is intended to strengthen community participation in the pursuit of the human right to water and water justice (Pirnando, 2017; Interview 22).

Constraints and possibilities for water justice

In August 2018, the Governor of Jakarta – after declaring the government’s commitment to respecting the Supreme Court ruling, and amid KMMSAJ’s insistence that the proposed partial remunicipalisation was a ploy to circumvent the ruling – established a task force composed of civil servants and experts whose mandate was to formulate a water policy that implements the Supreme Court ruling. The two legal victories for a de-Westernised idea of the human right to water have opened new opportunities for remunicipalisation, as indicated by the recent inclusion in the task force set up in August 2018 by the Governor of Jakarta of a member of the loose pro-remunicipalisation coalition (Interview 13).

After assessing the relative implications of three alternative scenarios, in January 2019 the task force advised the governor to bring a civil suit and amiably negotiate the conditions for the termination of the two concessions (Wildan, 2019). In the absence of an agreement on the sale of the shares by the two concessionaires, the governor was also advised to gradually remunicipalise the water supply. He was advised against waiting until the two contracts expired in 2023 and then failing to renew the concessions, as this would mean that there would be no service improvements until then. Another recommendation was to avoid terminating the contract unilaterally as this would entail the risk of having to pay compensation (estimated to be in excess of US\$71.4 million) and of harming the city’s business environment. Despite a Supreme Court ruling in November 2018 that its own ruling of October 2017 had not fulfilled the criteria of a civil lawsuit, Jakarta Governor Anies Baswedan decided to accept the solution recommended by the expert task force under the auspices of the 2015 constitutional ruling. The recommendations of the expert task force have been criticised by KMMSAJ on the grounds that a negotiation behind closed doors with private shareholders would be no more transparent than the one that took place between the two multinationals and Suharto in the 1990s. Therefore, the argument goes, this solution would undermine the principles of transparency and accountability and the human right to water itself (Prabowo, 2019; Atika and Aqil, 2019). On whether or not the policy path recommended by the expert task force is conducive to transformative remunicipalisation, the jury is still out.

RESISTANCE TO REMUNICIPALISATION

An anti-remunicipalisation coalition emerged from the pro-privatisation actors responsible for the introduction of the concession model in Jakarta in the 1990s. This is a less extensive coalition than KMMSAJ and its allies, which is not surprising given the fact that the beneficiaries of the concessions comprise a tight clique (Leong, 2015) composed of the private concessionaires and their international and domestic shareholders, the national government, the World Bank, and other powerful players. The members of this coalition share an interest in the continuation of the two concessions irrespective of the path dependency of corruption and their abysmal performance. They also share a neo-liberal belief in the lack of alternatives to water privatisation that follows from the assumed technical superiority of the

private sector.⁶ Moreover, they have access to important resources like political power and financing and can count on a favourable institutional setting. More precisely, as the dominant governance regime of the day, neo-liberal authoritarianism insulates neo-liberal policies and institutional practices such as privatisation from social and political dissent (Bruff, 2014). Reliance on favourable institutions and access to important resources and relations enable the mobilisation of tactics including outright coercion, the control of political opportunities, and hegemonic practices.

Varieties of coercion as counter-mobilisation

The corruption that surrounded the award of the two concessions was part of a system that, by fuelling patronage and nepotism, supported Suharto's political power (Robertson-Snape, 1999). The corruption constituted a coercive form of "accumulation by other means" which, while deeply embedded in the Indonesian state apparatus (Robbins, 2000; Wade, 1982), saw the direct participation of the two multinationals and the indirect involvement of other international actors. In particular, the World Bank tolerated the corruption associated with the concessions and continued to financially support private operations after the fall of Suharto (Hall, 1999). The World Bank's tolerance of the corruption is evident from the declarations by the regional director for Asia Pacific, who justified the multinationals' involvement in the corrupt deals by attributing it to the corruption of the local political environment (Harsono, 2003).

If the Indonesian government resorted to coercion (in the form of Suharto's orders) to award the two concessions, the current democratically elected government has continued Suharto's policy of openness to foreign direct investment (FDI) in ways that reinforce neo-liberal authoritarianism. This policy has shaped advocacy opportunity structures through national legislation. The national government, and particularly the Ministry of Public Works, is preparing new laws that will ease water privatisation and oppose remunicipalisation, as the latter policy option is incompatible with their agenda of further expanding private sector involvement and attracting foreign investment (Interview 15). The difference in the stances of the national and provincial governments – with the former overtly resisting citizens' demands for remunicipalisation and the latter showing signs of being more responsive to such demands – shows how neo-liberal authoritarianism manifests itself more readily in national governments. In fact, these are more directly exposed to the influence of international financial organisations and other bodies promoting privatisation while local authorities are more subject to democratic accountability in the reform of local public services.

The above is only one example of an ample repertoire of more subtle forms of coercion that constitute a denial of the legitimacy of emancipatory insurgency and its demands. By virtue of the porosity and interpenetration of powerful private conglomerates, political parties, national and local governments and the asset holding company PAM Jaya, these practices are not confined to the national government. The anti-remunicipalisation coalition enjoys direct access to the national government through informal channels and shares with government the objective of strengthening a business-friendly environment. (A number of interviewees referred to reports of negotiations being held behind closed doors over the extension of the water concessions for another 25 years – see Interviews 2, 3, 5.) We also observed several cases of 'revolving doors' between positions in private companies and posts in government and administration. An eloquent example of how the strong ties between members of the anti-remunicipalisation coalition may translate into subtle forms of coercion is represented by PAM Jaya's attempt to force the situation by renewing the two concessions in defiance of the 2017 Supreme Court ruling. In March 2018, PAM Jaya Director Erlan Hidayat organised a ceremony at City Hall for the signature

⁶ The promotion of water privatisation has been underpinned by theories predicting government failure, and prescribing private sector management because of assumed superior private sector efficiency. This theoretical armoury, which some observers describe as public choice ideology, emboldened the World Bank to assert that "there is no alternative" to water privatisation (Lobina, 2013, 2017).

of an agreement to 'restructure' the contracts. As the content of the proposed concessions did not differ from that of the contracts renegotiated in 2001, this would in fact have been an extension of the existing arrangements. The attempt failed when Jakarta Governor Anies Baswedan cancelled the ceremony, explaining that he had not received a draft of the contracts. The governor then appointed a former manager of Aetra as director of PAM Jaya (Arbi, 2018; Jakarta Post, 2018).

Counter-mobilisation by obfuscation

The obfuscation of public debate is instrumental in the reproduction of hegemonic discourse. It is notable that, despite repeated assertions of the technical superiority of the private sector and the intrinsic inability of the public sector to develop the water system, the anti-remunicipalisation coalition has not attempted to co-opt the discourse on the human right to water as advocates of privatisation have done elsewhere (Bakker, 2007; McDonald, forthcoming). An observer has suggested that this tactic might reflect the fact that in Indonesia the discourse on the human right to water is not confined to meeting a set of technical objectives that are compatible with claims of superior private efficiency, such as expanded access or service quality. By contrast, engaging with a de-Westernised discourse on the human right to water would not only entail the involvement of the state in water service management, but also the participation of citizens through democratic and transparent governance (Al'Afghani, 2006). As in the case of coercion, and as illustrated by the examples below, the repertoire of counter-mobilisation by obfuscation is varied.

The national government has promoted the narrative that only private companies are capable of making the necessary investment and providing the required technology and expertise (Interview 6), despite the concessionaires' persistent difficulty in performing better than the beleaguered public utility PAM Jaya. This is only one example of attempts at hegemonising the public discourse by misrepresenting the reality of reform opportunity. Other examples of counter-mobilisation by obfuscation include the arguments advanced by the private company Moya Indonesia, who has claimed that turning the Aetra concession into a build – operate – transfer (BOT) contract would enable them to respect the 2017 Supreme Court ruling because a BOT amounts to public service provision in partnership with private companies (Interview 6). In fact, a BOT contract is a long-term concession with a guaranteed rate of return and a pricing mechanism designed to guarantee profitability as well as affordability (Hall and Lobina, 2006), akin to the distinction between a water charge and a water tariff introduced by the 2001 renegotiation (Lobina and Hall, 2013). Transforming the current concessions into BOT contracts would therefore only perpetuate the status quo.

Attempts to argue in favour of public – private partnerships – including the current concessions, the proposed BOT contracts, and a mooted joint venture between PAM Jaya and domestic private property developers – have often been made since remunicipalisation became a realistic policy option. This is another example of hegemonic discourse, with the neo-liberal advocacy coalition distorting the reality of facts to influence decision-making (Lobina and Hall, 2013).

One such example of counter-mobilisation by obfuscation involves the Governor of Jakarta. It is notable that the position of Jakarta's provincial government on the relative merits of water remunicipalisation and privatisation has changed in response to the political considerations of different governors. This means that the government can at different times be considered as a de facto member of either the pro-remunicipalisation or the anti-remunicipalisation coalition. In June 2013, despite the advice of KMMSAJ, the newly elected Governor of Jakarta, Jokowi, proposed reforming the service in a way that departs from the idea of transformative remunicipalisation. More precisely, the governor proposed buying the multinationals' shares through the city-owned enterprise Jakarta Propertindo (Jakpro), which would then be responsible for managing the city's water supply in cooperation with PAM Jaya. This proposal from Jokowi was not welcomed by the coalition as they argued that having Jakpro manage the water would not bring any significant change. As a city-owned enterprise that was

commercially run and due to be listed on the stock exchange, Jakpro's motivation was in fact no different from that of the two profit-oriented private operators. Interestingly, Jokowi was persistent in saying that having Jakpro manage the water service would be the same thing as having the city administration manage it (Elyda and Dewi, 2013; Jacobson, 2014; Wardhani, 2016).

Constraints and possibilities for water justice

The way in which neo-liberal authoritarianism manifests itself in the counter-mobilisation tactics of the anti-remunicipalisation coalition severely restricts the possibilities for water justice. What is most striking, perhaps, is the path dependency of coercion despite the political regime change from a dictatorship to a parliamentary democracy. More than 20 years after Suharto's iron fist imposed the two corrupt deals on local stakeholders, and despite a more assertive role for local democracy in recent years, decision-making on how to accommodate the urgent demands of emancipatory insurgency is still dominated by two main concerns: avoiding the payment of multimillion dollar compensation in case of contract termination⁷ and avoiding repercussions on the FDI climate. The lock-in of these preoccupations in the minds of decision-makers, and the primacy over questions of water justice that mainstream policy makers give them, remind us – if a reminder was ever needed – that the way in which institutions are embedded in social systems of power relations is not symmetric (Lawson, 2015c). The institutions invoked in the emancipatory discourse on concrete utopias do not have the same weight on immediate events as those that support the counter-mobilisation of the hegemons.

Indeed, it is apparent that the attitude of neo-liberal authoritarians is, at best, one of indifference for the travails of moral advocacy. The prevailing rationality here is that of instrumentality. Engaging with moral imperatives or even with more mundane questions of factual representation in the public sphere is conducive to meeting technocratic objectives like the renewal of a long-term concession, however controversial its history, and to the reproduction of power that underpins neo-liberal authoritarianism. If the alignment of interests, power and the dominant governance regime seems inimical to the possibility of water justice, this only strengthens the moral case for emancipatory insurgency.

CONCLUSION: WHAT IS THE LIKELIHOOD OF REMUNICIPALISATION?

Despite two important legal victories for the pro-remunicipalisation coalition, the neo-liberal advocacy coalition appears to be in a position to influence policy change by virtue of the porosity and interpenetration of powerful private conglomerates, political parties and national and local governments. The outcome of the unequal struggle between the two advocacy coalitions remains uncertain and will depend on their respective abilities to create and respond to political opportunities by deploying a variety of mobilisation tactics. There are, however, important lessons to be taken from a comparison of the struggle for and against water remunicipalisation in Jakarta. These lessons particularly pertain to the nature of transformative remunicipalisation and the centrality of moral advocacy to collective action.

Defining transformative remunicipalisation

A first, formal definition of transformative remunicipalisation is herein offered. This is defined as an ideal type of water remunicipalisation whose institutional legitimacy rests on the moral advocacy of emancipatory insurgency and whose implementation offers concrete possibilities of progress towards emancipatory objectives. In recognition of the processual and co-constituted nature of social reality (Lawson, 2015a), this definition is premised on a double assumption. If the policy outcome of remunicipalisation cannot be understood in isolation from the policy process, neither of the two is reducible to the other. Otherwise put, the study of the nature and impact of the process of

⁷ see Kynast in this Special Issue for a discussion of the impacts of 'investor-state dispute settlement' mechanisms, including the facilitation of compensation, as they relate to water remunicipalisation.

remunicipalisation has epistemological value even when this process does not result in the implementation of this reform. One condition for the remunicipalisation process to be transformative in the absence of ownership change, is that the moral advocacy of emancipatory insurgency (of which more below) nonetheless possesses causal powers. The advocacy of the pro-remunicipalisation coalition in Jakarta offers a case in point. While the events in this case study do not refer to a concrete experience with remunicipalisation, evidence on the emancipatory potential of remunicipalisation was used in support of the moral advocacy of remunicipalisation in Jakarta, including in support of legal proceedings (Lobina and Hall, 2013).⁸ The important legal victories obtained by the pro-remunicipalisation coalition, despite what can be described as an unequal struggle, testify to the emergent nature of moral advocacy even if the intended policy outcome of the coalition has not (yet) been achieved. Hence, we lay claim to the relevance of our formal definition to the emerging debate on the nature and societal promise of remunicipalisation.

Co-constructing the human right to water

As regards the centrality of moral advocacy to collective action, one contention is that the hybridisation of emancipatory discourse enables the transcendence of the limitations of the Western origin of the concept of the human right to water. By drawing on cross-cultural and universal principles like 'water as life'⁹ and the primacy of human flourishing,¹⁰ the proponents of transformative remunicipalisation may turn the human right to water into a powerful discursive resource responding to Southern, if not universal,¹¹ logics of appropriateness. We find that the limitations of the discourse on the human right to water identified by Bakker (2007) have not prevented the pro-remunicipalisation coalition from making important advances towards obtaining the desired policy change. This is because, thanks to social learning, the pro-remunicipalisation coalition has introduced ideas into the local debate that emphasise the compatibility of the human right to water with the realisation of collective – rather than individual – civil rights and the enhancement of community development. As regards claims that the human right to water is compatible with water privatisation, the pro-remunicipalisation coalition has intertwined its demands for ownership change and the realisation of the human right to water with ideas of community development that – like water justice and 'water as a commons' – are antithetical to commodification, ideas that are contained both in local culture and domestic law, as exemplified respectively by the notion of *Semesta Air* and the spirit of the Indonesian Constitution (Marwa, 2017).

Conversely, the challenges faced by the pro-remunicipalisation coalition in achieving progressive policy change in Jakarta should not be attributed to the moral advocacy of the human right to water, but rather to the sheer disparity of resources between the two advocacy coalitions. One of these challenges is represented by the resistance mounted by the national government and the private companies to the implementation of the Supreme Court ruling. However, this resistance could not be expected to abate if

⁸ For a discussion of the comparative advantage of the public sector over the private sector in terms of its ability to align water service operations to achieve sustainable development objectives (or foster water justice), see Lobina (2013). In particular, see Lobina's (ibid) treatment of Lorrain's paradox, or the paradox of multiple agency. Lorrain's paradox can be illustrated as follows: a) Lorrain (1997) argues that the plurality of objectives pursued by the public sector, including social justice, goes to the detriment of productive efficiency and finds in favour of private over public ownership; b) Lobina (ibid) observes that the private sector's profit maximisation imperative represents a strong incentive to extract value to the detriment of distributive efficiency, whereas the public sector – being less constrained by high-powered incentives to extract net gains – can more easily align productive and distributive efficiency; and, c) Lobina (ibid) concludes that the public sector has a comparative advantage in the promotion of sustainable water development (or fostering water justice) in all its dimensions.

⁹ On the universal cognitive principle of 'water as life', in reflection of the fact that the idea of water produces cross-cultural meanings associated with life and death and with social and spiritual identity, see Strang (2005).

¹⁰ On the centrality of human flourishing to universal ideas of emancipatory development and the moral necessity of conceptualising this emancipation as individual and collective at the same time, see Lawson (2015b).

¹¹ On the ontological possibility of dissociating the Western origins of human rights from the historical contingencies that make them compatible with neo-liberal policy agendas, see Goodhart (2003).

the pro-remunicipalisation coalition were to use framings other than the human right to water. As for the risk that the private companies might co-opt the discourse on the human right to water, this possibility exists for any notion central to the narrative of civic campaigns, as demonstrated by the repeated attempts of the anti-remunicipalisation coalition to misrepresent the meaning of water remunicipalisation and privatisation. The upshot is that, as a discursive strategy, the creative integration of emancipatory discourses promises to better support the moral advocacy of concrete utopias than the segregation of and competition between such discourses.

Understanding the moral advocacy of water justice

Another contention is that, as a normative aim of transformative remunicipalisation, water justice becomes the terrain of inevitable contestation. This takes unpredictable forms, bringing into sharp relief the unequal resources of the proponents and opponents of remunicipalisation and suggesting that no mobilisation strategy is infallible. Also, the tensions between the normative ideals that inspire collective action and the strategic practice of advocacy – tensions that are inherent the pursuit of concrete utopias – require the constant reinterpretation of these ideals. Such tensions may be visible in the disagreements between members of the pro-remunicipalisation coalition and the expert task force on the proposed path to remunicipalisation. They are also visible in the refinement of the discourse on the human right to water in response to different legal strategies. An example of this is the emphasis on water for farming that arose in connection to legal challenges against national law but did not arise in connection with the legal challenges against the validity of the Jakarta concessions, as farmers were not part of the urban coalition of activists that brought the case to court.

Indeed, the effectiveness of moral advocacy as an instrument of human flourishing (Lawson, 2015b) depends on the alignment of beliefs, interests, resources, relations and institutions, more than it does on the societal appeal of notions like the human right to water in isolation from other determinants of collective action outcomes. The effectiveness of moral advocacy also depends on the ability of coalitions to mobilise these concepts and build and reproduce (through social learning) a syntax of moral discourse, more than it does on the static attributes of concepts like the human right to water. This effectiveness depends no less on the ability of coalitions to reclaim moral discourse from attempts to misrepresent its meaning and obfuscate public debate. Ultimately, moral discourse is the terrain of endless contestation due to the ontological openness and multiplicity of meaning of strategic notions like the human right to water. This ontological openness results in the necessity of wickedness (Lobina, 2016, 2018) – that is, the impossibility in a pluralist society of preventing the emergence of disagreement about the meaning of moral discourse. And this is why, like the human right to water and transformative remunicipalisation, water justice will not be televised.

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APPENDIX

List of interviews

Interview number	Typology of actor	Date of interview
1	Investigative journalist	5 July 2018
2	Investigative Journalist	6 July 2018
3	Asset holding company	6 July 2018
4	Civic organisation	7 July 2018
5	Investigative journalist	7 July 2018
6	Company shareholder	9 July 2018
7	Civic organisation	9 July 2018
8	Civic organisation	9 July 2018
9	Civic organisation	9 July 2018 ¹²
10	Civic organisation	10 July 2018
11	Civic organisation	11 July 2018
12	Civic organisation	11 July 2018
13	Civic organisation	11 July 2018 ¹³
14	Civic organisation	12 July 2018
15	International financial institution	18 July 2018
16	Company shareholder	9 August 2018
17	Civic organisation	25 June 2018
18	Civic organisation	16 January 2017
19	Civic organisation	18 January 2017
20	Civic organisation	23 January 2017
21	Civic organisation	24 January 2017
22	Civic organization	25 January 2017

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